IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Bail Appl..No. 4780 of 2007()

CRIME NO. 113/06 OF VILAPPILSALA POLICE STATION

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PETITIONER/ACCUSED

RATHEESH @ KUTTAN, AGED 23 YEARS,
S/O RAVEENDRAN, ULAYALKKATTACKAL VEEDU,
ARUVIPPURAM, PEYAD P.O.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: COMPLAINANT & STATE

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1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
VILAPPISALAL POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4780 of 2007

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Dated this the 8th day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. Altogether there are four accused persons. The other three have not been identified so far. The crux of the allegations is that the petitioner, along with the co-accused, on account or animosity arising from an earlier incident, which had taken place on that day, had trespassed into the house of the defacto complainant after making the necessary preparations armed with dangerous weapons and unleashed an attack on the defacto complainant. Sec.452 is the non-bailable offence alleged. The injuries suffered are not serious or grievous. Crime was registered. The petitioner was named in the F.I.R. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner's mother was attacked in the earlier incident which had taken place and a crime has been registered also. Merely to extricate the defacto complainant

from the consequences of such crime, a totally false allegation has subsequently been raised against the petitioner, it is submitted. In any view of the matter, the petitioner does not deserve to endure the trauma of arrest and detention. He may be granted anticipatory bail, submits the counsel.

3. The application is opposed by the learned Prosecutor. He submits that the allegations clearly reveal an offence punishable under Section 452 I.P.C., which is non-bailable. Allegation under the Arms Act has been dropped by the Investigating Officer.

4. Having considered all the relevant inputs, I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. Such discretion cannot be invoked as a matter of course. Sufficient and compelling reasons must be shown to exist. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. He must co-operate with the Investigators. The identity of the other three accused has got to be ascertained. In any view of the matter, I find no features in this case to invoke the extra ordinary equitable

discretion under Section 438 Cr.P.C. in favour of the petitioners.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

Sd/-

(R. BASANT)
Judge

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P.A. to Judge